

FINAL ORDER

DATE 08/31/2010

IN THE MATTER OF:

Michael T. Frasca,

Applicant

BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

Case No.: DLR-CFR-76B-10-12986

PROPOSED ORDER

The Proposed Decision of the Administrative Law Judge in the captioned case having been considered in its entirety, it is **ORDERED** by the Commissioner of Financial Regulation (the "Commissioner") this 27th day of July, 2010 that the Proposed Default Order shall be and hereby is adopted as a Proposed Order and the denial of the Applicant's renewal application for a Maryland Mortgage Originator's License is upheld.

Pursuant to COMAR 09.01.03.09, Applicant has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Applicant has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2).

Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.

COMMISSIONER OF FINANCIAL REGULATION

By:


Mark Kaufman

Deputy Commissioner of Financial Regulation

MICHAEL T. FRASCA,

APPELLANT

v.

COMMISSIONER OF FINANCIAL
REGULATION

* BEFORE DAVID HOFSTETTER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE No: DLR-CFR-76B-~~08-25581~~ ¹⁰⁻¹²⁹⁸⁶

* * * * *

PROPOSED DEFAULT ORDER

On February 16, 2010, the Maryland Commissioner of Financial Regulation (Commissioner or CFR), Department of Labor, Licensing and Regulation, denied the Appellant's renewal application for a Maryland Mortgage Originator's License. The denial was based on various grounds, including prior, relevant felony convictions. On or about March 31, 2010, the Appellant filed an appeal, after which the Commissioner referred the matter to the Office of Administrative Hearings (OAH) for a hearing.¹

On April 26, 2010, the OAH mailed a Notice of Hearing to the Appellant via certified and regular first class mail at his last address of record. The Notice of Hearing stated that a hearing was scheduled for Thursday, June 24, at 9:30 a.m., at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. The Notice further advised the Appellant that failure to attend the hearing might result in "a decision against you." On or about May 1, 2010, the Appellant signed the certified mail "green card," evidencing receipt.

On June 23, 2010, the Appellant spoke by telephone with staff in the OAH clerk's office and stated that he was sick and could not attend his hearing the next day. He was informed that any postponement request must be in writing and must include written documentation of the basis for

¹ The Commissioner delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a proposed order.

the request. On June 23, 2010, sometime after approximately 4:30 p.m., the Appellant faxed a postponement request to OAH. On the morning of the hearing, June 24, 2010, the postponement request was brought to my attention. The postponement request stated that the Appellant had “fallen ill” and would be unable to attend the hearing. The type or nature of the alleged illness, or why it would prevent him from attending his hearing, was not specified. The request also appeared to state (although the language used is somewhat ambiguous) that the Appellant had been seen at a Ready Care medical facility in York, Pennsylvania on June 23, 2010. The request further stated that, for reasons that were not clearly explained in the letter, he had been unable to obtain from Ready Care any documentation of his appointment. No documentation was included with the postponement request. On June 24, 2010, at approximately 8:30 a.m., OAH staff, at my direction, called the Appellant and the Assistant Attorney General’s office and informed them that the postponement request was denied for lack of good cause, COMAR 28.02.01.16C, and because it did not establish the existence of an “emergency” under COMAR 28.02.01.16D.

On June 24, 2010, I convened the hearing as scheduled, at 9:30 a.m. Md. Code Ann., Fin. Inst. §§ 11-518 (2003). Neither the Appellant nor anyone authorized to represent him appeared. Kris M. King, Assistant Attorney General, Department of Labor, Licensing, and Regulation, was present, representing the Commissioner. A witness to be called by the Commissioner was also present. After waiting approximately thirty minutes, during which time the Appellant still failed to appear, the Commissioner made a motion to dismiss the Appellant’s appeal.

I admitted five exhibits on behalf of the Commissioner:

CFR Ex. #1	Applicant’s request for a hearing, received March 31, 2010
CFR Ex. #2	Denial letter, dated February 16, 2010

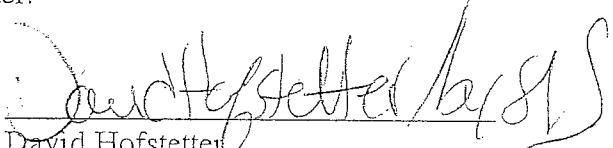
CFR Ex. #3	Print-out of licensing history of Appellant, dated June 22, 2010
CFR Ex. #4	Letter from the Appellant to "Whom it may Concern," undated
CFR Ex. #5	Statemortgageregistry.com print-out regarding the Appellant, dated December 15, 2009

I also took note of other documents appearing in the OAH file, including the Notice of Hearing, dated April 26, 2010, the certified mail receipt, and the delegation of authority from the CFR to OAH, dated April 5, 2010.

The Appellant bears the burden of proving, by a preponderance of the evidence, his entitlement to the license. COMAR 09.01.02.16B. Because the Applicant failed to appear after proper notice, I **RECOMMEND** that the Maryland Commissioner of Financial Regulation issue a Default Order noting the following:

1. Michael T. Frasca is found in default; and
2. All further proceedings in the captioned matter are **TERMINATED**, and a disposition of **DISMISSAL** is entered in this case, pursuant to COMAR 28.02.01.23; and
3. In accordance with COMAR 09.01.03.09A and 28.02.01.23B, the Appellant or his representative may file with the Commissioner written exceptions within twenty days from the postmark date of the Default Order. Any such exceptions must state the grounds for the request to modify or vacate the Default Order.

June 28, 2010
Date Decision Mailed


David Hofstetter
Administrative Law Judge

DH/rbs
#114890